IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.669 OF 2022

1. Pradeep Vanechand Gandhi }
2. Nisha Pradeep Gandhi }
both are R/at Bhagirathi Bhawan, }
14/43, Panjarpol, 1st Lane, C.P. Tank, }
Mumbai-400 004 } **...Appellants**

Versus

1.Haresh M. Shah }
R/at 10A, Mansukh Niwas 188, }
Khetwadi Back Road, Girgaon, }
Mumbai-400 004. }

2. Dinesh Lataprasad Charasia }
Prop. R.K. Transport, 90 Feet Road, }
Dharavi, Mumbai-400 017 }

3. Bajaj Allianz General Insurance Co. Ltd. }
Jaisingh Business Centre, 4th Floor, }
Sajar Road, Andheri (East), }
Mumbai-400099 }

4. New India Assurance Co. Ltd. }
Moti Mahal, Churchgate Reclamation, }
J. Tata Road, Mumabi-400 020 } **...Respondents**

Mrs.Varsha Chavan, for the Appellants.
Mr.D.S. Joshi, for Respondent No.3.
Ms.Jyoti Bajpayee, for Respondent No.4.

CORAM : S.G. DIGE, J.

DATE : 14 FEBRUARY 2023

JUDGMENT :-

. This Appeal is preferred by the Claimants for enhancement of compensation.

2. It is contention of the learned counsel for the Appellants that deceased was 19 years old. He was a student having bright future. He was studying in 11th Class of Commerce side. He was aspiring to be a Chartered Accountant. The deceased was only son of the Claimants. The Tribunal has not appreciated the background from which the deceased came. The father of deceased is well educated and comes from middle class family. The evidence was led to show that the deceased's monthly income was Rs.10,000/- per month. But the Tribunal has considered only Rs.3,000/- which is on lower side.

3. The learned counsel further submits that the Tribunal has not granted future prospects and consortium amount, hence requested to allow the Appeal.

4. The learned counsel relied on judgment of Apex Court in case of ***National Insurance Co. Ltd. V/s. Pranay Sethi***[1] and ***Magma General Insurance Co. Ltd V/s. Nanu Ram***[2] , and

1 **2017 ACJ 2700 (SC)**
2 **2018 ACJ 2782 (SC)**

Municipal Corporation of Delhi V/s. Association of Victims of Uphaar Tragedy & Ors.[3]

5. The learned counsel for the Respondent-Insurance Company submits that the deceased was studying in 11th Standard. So the monthly income considered by the Tribunal is on higher side. Mere aspiring to become Chartered Accountant cannot be a ground to consider the income of Rs.10,000/- per month. Even he had not passed the 11th Standard. So his income should have been considered below Rs.3,000/-, while calculating the compensation, the Tribunal has already considered the income of Rs.3,000/- per month, this amount can be adjusted in the amount of future prospects and consortium amount, it is not necessary to award separate amount for it. Hence requested to dismiss the Appeal.

6. I have heard both the learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short 'the Tribunal').

7. The issue involved in this Appeal is income of deceased considered on lower side. To prove the income of deceased, claimant No.1 has examined himself at Exhibit-50. He stated that the deceased was a student with bright career and had aspiration to become Chartered Accountant, and had he been

3 **2012 ACJ 48**

alive, he would have earned income of Rs.1,20,000/- per annum i.e. Rs.10,000/- per month. The Tribunal has observed that the deceased was 19 years old he was a student hence his income can be considered as per notional income of Rs.3,000/- per month. On that basis, the Tribunal has considered Rs.3,000/- per month as notional income. The future prospects are considered as 50%, his total notional income considered as Rs.4,500/- per month.

8. In my view, the deceased was the only son of Claimants. The deceased had an aspiration to become Chartered Accountant that is why he had taken admission in Commerce stream. The Hon'ble Apex Court in the case of ***Nagar Mal & Others V/s. Oriental Insurance Co. Ltd. & Ors.[4],*** has held that the deceased was student pursuing his Chartered Accountancy was in receipt of monthly income of Rs.15,000/-, and considered income of Rs.6,000/- per month.

9. In the present case, the deceased was studying in 11th Standard. He was 19 years old. He was the only son of the Claimants. The Tribunal has considered monthly income of deceased at Rs.3,000/-. As per view of Hon'ble Apex Court in the case of *Nagar Mal (Supra),* I am considering notional monthly notional income at Rs.6,000/- per month.

4 **(2018) 3 Supreme Court Cases 130**

10. The learned counsel for the Appellants submits that in companion matters arising out of same accident. The Tribunal has awarded compensation around Rs.21,69,000/- each in both matters, the Appeals were preferred against those orders by insurance company, but later on those Appeals were withdrawn by the Insurance Company. Hence, same ratio be applied in this matter as the Insurance Company has agreed for quantum of compensation of Rs.21,69,000/-.

11. The learned counsel for the Appellant has relied on ***Municipal Corporation of Delhi V/s. Association of Victims of Uphaar Tragedy[5].***

12. In my view, while enhancing the compensation this Court has to see the evidence led before the Tribunal and the ground for enhancement compensation. In other matters, though the Tribunal has given certain amount, it does not mean that this Court can consider same amount in this matter. For enhancement of compensation, the Court has to consider evidence led before the Tribunal. Hence, I do not see merit in the contention of the learned counsel for the Appellants that in companion matters, compensation is granted on higher side, hence, same compensation be granted in the present matter. I have gone through the case laws cited by learned counsel for the

5 **2012 ACJ 48 (SC)**

Appellant. The facts of cited case are different as I have already considered notional income of Rs.6,000/- on the basis of the decision of the Apex Court in the case of *Nagar Mal & Ors (Supra).*

13. As per the view of the Hon'ble Apex Court in the case of *Pranay Sethi (Supra)*, the Claimants are entitle for 40% future prospects. The Tribunal has not awarded consortium amount and amount for funeral expenses and amount for loss of estate. As per view of the Apex court in the case of Magma General Insurance Co. Ltd (Supra), the Claimants are entitled to Rs.40,000/- each with 10% increase as consortium amount. In view of above calculations, the Claimants are entitled for following compensation.

Monthly notional income		Rs.6,000/-
Dependency	50%	Rs.3,000/-
Years Income Rs.3000/- x 12 months		Rs.36,000/-
Multiplier	18	
Loss of Income		Rs.6,48,000/-
Future Prospects	40%	Rs.2,59,200/-

Total Loss of Dependency		Rs.9,07,200/-
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Conventional Heads :		
Consortium	Rs.88,000/-	
Loss of Estate	Rs.16,500/-	
Funeral Expenses	Rs.16,500/-	Rs.1,21,000/-
Compensation payable		Rs,10,28,200/-

Compensation already granted	Rs.5,11,200/-

Enhancement	Rs.5,17,200/-
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14. The total amount comes to Rs.10,28,200/-. The Tribunal has awarded Rs.5,11,000/-. If this amount is deducted from the amount considered by this Court, it comes to Rs.5,17,200/-. The Claimants are entitled for this amount. I pass following order.

ORDER

(i) The Appeal is allowed.

(ii) The Claimants are entitled for enhanced amount of Rs.5,17,200/- at the rate of 7.5 % per annum from the date of the filing of the Claim Petition till realization of the amount.

(iii) The Respondent No.3 shall deposit the enhanced amount within four weeks along with accrued interest thereon.

(iv) The Claimants are permitted to withdraw the amount with accrued interest thereon.

(v) All pending Civil Applications, if any, are disposed of.

(S.G. DIGE, J.)